IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 7059 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JABIRALI RIYAZALI SHEIKH

Versus

STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 7059 of 2004
MR MM TIRMIZI for Petitioner No. 1
MS PUNANI Ld. AGP for Respondent No. 1-3
RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 08/12/2004

ORAL JUDGEMENT

1. Heard the ld. advocate Ms. Qureshi for Mr. MM Tirmizi for the petitioner and Ms. Punani ld. AGP for the respondent-State. Affidavit-in-reply tendered by ld. AGP Ms. Punani is ordered to be taken on record.

2. The present petition is under Article 226 r/w.

Article 21 and 22(5) of the Constitution of India. The petitioner has challenged legality and validity of order of detention dated 4.6.2004, passed by the Police Commissioner, Rajkot City, under purported exercise of powers vested with the Detaining Authority under Sec. 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short 'the Act').

3. The petitioner is branded as "a bootlegger" within the meaning of Sec. 2(b) of the Act. The petitioner has assailed the order of detention on various grounds mentioned in para-4(a) to 4(n) of the memo of petition. The detaining authority has considered mainly the fact of two different criminal offences registered against the present petitioner by B-Division Police Station, Rajkot City. Both the offences came to be registered on 31.5.2004 and they are under same section punishable under the Bombay Prohibition Act. In the first offence, he was arrested on the same day on which the offence was committed and in the second offence, he was formerly arrested on 4.6.2004. While recording the subjective satisfaction, the detaining authority has recorded two different statements. Ms. Qureshi though has taken this court through various grounds whereby the order of detention has been assailed, however, she has pressed her arguments mainly on two grounds. The first ground pressed into service is that there was no need to pass preventive detention order as the petitioner was in judicial custody for both these offences and this fact is emerges from the grounds of detention conveyed to the petitioner. The inference has been drawn on conjecture and surmises that the petitioner would get bail from the competent court and shall continue his activity as bootlegger. Mere registration of two offences cannot be considered as an activity adverse to the maintenance of public order. In reality, according to Ms. Qureshi, only one offence is found to have been committed but two different offences have been registered for the reasons best known to the Investigating Agency. Without entering into the merits of this submission, the order can be quashed only on this ground that the order is passed without application of mind. She has also pointed out that the statements of two witnesses recorded on 1.6.2004 and was verified by the detaining authority on 2.6.2004 and no formal arrest of the petitioner even was made qua second offence till 4.6.2004 and the day on which the formal arrest of the present petitioner was made on 4.6.2004, the order of detention is passed. There is some force in the submission of Ms. Qureshi that the order of detention is passed mechanically and in hot

haste without considering the relevant aspect emerging from the record and especially the fact that the petitioner was in judicial custody in both the cases. It is not necessary to enter into discussion of other grounds. The petitioner is therefore, required to be allowed.

4. This petition is allowed. Impugned order of detention dated 4.6.2004 passed by the Police Commissioner, Rajkot city, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute. DS permitted.

(C.K. BUCH, J.)

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